FOR ARGUMENT

Supreme Court, U. S.
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Nos. 78-432, 78-435, 78-436

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC, PETITIONER

v.

BRIAN F. WEBER, KAISER ALUMINUM & CHEMICAL
CORPORATION, AND UNITED STATES OF AMERICA,
RESPONDENTS

KAISER ALUMINUM & CHEMICAL
CORPORATION, PETITIONER,

v.

BRIAN F. WEBER, RESPONDENT

UNITED STATES OF AMERICAL AND EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION, PETITIONERS

v.

BRIAN F. WEBER, ET AL.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF AMICUS CURIAE
Pacific Civil Liberties League

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UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC, petitioner, v. Brian F. WEBER et al.
No. 78-432

KAISER ALUMINUM & CHEMICAL CORPORATION,
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No. 78-435

UNITED STATES et al., petitioners,
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No. 78-436

BRIEF OF AMICUS CURIAE
Pacific Civil Liberties League

INTEREST OF THE AMICUS CURIAE

The Pacific Civil Liberties League is a forum formed in 1978 by David J. La Rivière, an American of Acadian descent, in order to provide a voice for oppressed Americans of his heritage. This Amicus Curiae is interested in this particular legal action, as it is public knowledge that Brian F. Weber is an American of Acadian descent,[1,2] This Amicus Curiae is further interested in this legal action, as David J. La Riviére, now has pending a legal action alleging deprivation of CIVIL RIGHTS on account of race, in the U.S. District Court for the Northern District of California. This legal action, which is entitled *David La Riviére v. EEOC et al.*, C-75-2692 RHS, questions the right of the Equal Employment Opportunity Commission and the U.S. Department of Labor to require employers to annually report the specific numbers of Blacks, Orientals, and Spanish-Surnamed-persons in their employ – without also requiring employers to report the numbers of French-Canadian-Americans or Acadians so employed. It is the contention of this Amicus Curiae that such disparate treatment of ethnic minorities in the U.S. is not validly based upon socio-economics and history. Further, if Americans of Acadian descent were to be judged by the same standards that one might judge the "qualifications" of EEOC-defined "minorities" to be classed in "specially protected" categories; it would become obvious that Americans of Acadian descent as a group are in greater need for true protection than several of the presently protected groups. It is further the contention of this Amicus Curiae, that the above-mentioned disparate classifications, as well as a myriad of associated Federal government

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[1] Weber is described in the Dec. 25, 1978 issue of *Time*, page 44, as being "a loquacious cajun . . ."

[2] The word Acadia as defined by *Funk & Wagnall's* means "A former name for a region in Eastern Canada," and also a parish in Louisiana settled by deported Acadians. The term "Acadian" is defined as one of the early French settlers of Acadia or their descendants.

employment policies and regulations, have the effect of depriving Americans of Acadian ancestry, and many others of effective American Citizenship.

In order to fully explain the interest of this Amicus Curiae, a short history of Acadia – the land of the ancestors of today's "Cajuns," will prove illuminating.

Early in the 18th century England acquired the formerly French colony of Acadie, or Acadia, as a part of the peace settlement of the War of Spanish Succession. The Acadians living in the territory, who were themselves, a mixture of French colonists and Mic Mac Indians, continued to live – for about 50 years under English occupation. In 1755, the British navy with the aid of American Colonials, forcibly seized many of the Acadians while they were in churches throughout Acadia. Those seized by the Anglo-Americans were deported to various ports in the Carribean. From 1755 until 1763, more than 10,000 Acadians were forcibly exiled, while many of them died from shock, sickness, starvation, or brutality, a new colony of Acadians eventually became established in Louisiana.

Although most of the Acadians were seized during the years 1755 to 1763 by the Anglo-Americans, several thousand Acadians did manage to escape into the wilderness of what is today Aroostock County in the extreme Northern tip of Maine.

Americans in the meantime occupied the farms and towns of Acadia. Included in the territory of Acadia was most of the present Maritime Provinces of Canada and the present Counties of Hancock and Washington on the Maine coastline. The Acadians were not allowed to return to their homes, nor were they compensated for their loses by any government.

Of those Acadians who had escaped from the Anglo-Americans, a portion of these refugees emigrated to Quebec, with the remainder establishing said community located in the upper

reaches of the St. John's River Valley. This community independently flourished until the United States seized effective control of the area in the 1850's. The United States occupied the portion of Nouvelle Acadie located on the right bank of the Upper John's River Valley while Canada occupied the left bank. The Acadians of Nouvelle[3] Acadie protested their incorporation into the United States to no avail. Today these Acadians still live in the upper reaches of the St. John's River Valley, speaking a dialect of French and eking out an income which is far below the national median.

This Amicus Curiae's purpose in submitting this brief is to bring to the attention of this Court the fact that the selection of "minorities" by the EEOC and the U.S. Dept. of Labor was both caprious and unjust. Further, that without considering the future effect of preferential "affirmative action" programs on excluded American minorities, such as French-Canadian-Americans of Acadian descent; this Court will be encouraging these racially partisan government agencies to continue to unreasonably advocate that employers grant favorable and disparate treatment of selected minorities, in violation of Title VII of the Civil Rights Act of 1964.

It is sincerely hoped that this brief will contribute to the knowledge of the Court in regard to the socio-economic and historical background of those persons in Gramercy, Louisiana and elsewhere, who belong to Brian F. Weber's class.

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[3] For the history of the deportation of the Acadians, the seizure of Nouvelle Acadie by the United States and Canada and Canada's seizure of French-Acandian-Metis-Indian lands in the 1880's see, *Histoire des Franco Americains,* publié Sous les Auspices de L'Union Saint-Jean Baptiste d'Amerique, par Robert Rumilly de L'academie Canadien-Francaise et aussie *Histoire des Acadiens* (2 vol., 1955) par le Meme auteur.

STATEMENT OF THE CASE

This Amicus Curiae adopts the counter-statement of the case, as set forth in the Respondent's brief in opposition to the Petition for Certiorari.

QUESTION PRESENTED BY THIS AMICUS CURIAE

Do the EQUAL PROTECTION CLAUSE and TITLE VII grant Americans of Acadian ancestry the same protection against discrimination in employment as that granted to Blacks, Hispanic Americans, and Orientals?

INTRODUCTION

This case involves a blatant and flagrant instance of race discrimination in employment. There is no question of evidentiary sufficiency; indeed the perpetrators admit their actions. However, the act was committed, and this litigation had to be brought, because of an element in the discrimination involved which – according to the perpetrators – transforms what would otherwise be a clear-cut breach of the Constitution into a deed not only permissible but indeed praiseworthy. The perpetrators feel justified in having Weber, an American of Acadian descent, sacrifice employment opportunities and income so that Blacks, Orientals, and Hispanics can have increased opportunities and income. The perpetrators, who also happen to be the petitioners in this action hold that Weber's sacrifice is necessary in order to make Blacks, Orientals, and Hispanics whole, from the effects of prior discrimination. The prior discrimination which the perpetrators and petitioners refer too, has been denied by Kaiser, the employer of Weber, which also admits granting special privileges of employment to lesser qualified Blacks. Kaiser admits denying Weber a position as a special trainee, even though Weber had greater seniority than several of the Blacks selected. Other than race, seniority was the only criteria used in selecting applicants for said special training position.

Weber brought suit in the U.S. District Court, E.D. Louisiana, against both Kaiser Aluminum & Chemical Corp., and the Union which had negotiated the above-noted special employment privileges for "minorities," United Steelworkers of America AFL-CIO.[4] The district court held for Weber.

Kaiser and the Union appealed the decision of the District Court to the Fifth Circuit United States Court of Appeals. The Court of Appeals affirmed the decision of the District Court, adding that as the "affirmative action" program was voluntary, a change in the Congressional legislation regarding Title VII would be necessary in order that Kaiser's program would not be violative of Sec. 703(a) and (d) of Title VII.[5] Kaiser and the Union petitioned the Fifth Circuit Court for rehearing, which was denied on April 17, 1978.[6]

Kaiser, the Union, and now the United States have joined as petitioners asking this Court to further consider the case in light special evidence, including statistical evidence of discrimination against Blacks at the Kaiser plant in Gramercy, La.[7]

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[4] *415 F. Supp. 761 (1976)* This action was brought for injunctive relief from effects of illegal discriminatory employment practices alleging that collective bargaining agreement had established quota system which discriminated against nominority members of plant labor force in violation of Civil Rights Act of 1964. The District Court, Jack M. Gordon, J., held that where black employees who were being preferred over more senior white employees under quota system had never themselves been subject of any unlawful discrimination during hiring, such black employees occupied their "rightful place" in plant and thus affirmative action quota system was inappropriate and violated unequivocal statutory prohibitions against racial discrimination against any individual.

[5] *563 F. 2d 216* (1977)

[6] *571 F. 2d 337* (1978)

[7] It appears that the EEOC wants the case remanded back to the District court for a trial which would consider these special considerations.

The petitioners are hardly disinterested in their own hides. Each of these petitioners is heavily committed to the maintenance of the present program whereby selected racial groups are arbitrarily granted many privileges of citizenship not enjoyed by excluded groups. Americans of Acadian descent have seen the "affirmative action" program grow from employment, to education, to criminal justice, to the granting of government laons and contracts, to the granting of FCC licenses to broadcast. For a group which was already in the lower rungs of society anyway, having far fewer professionals and a much lower median income than average, the exclusion of Americans of Acadian descent from the "affirmative action" program was and is, a harshly repressive measure.[8]

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[8] One of the finest statements on why quotas are wrong was made by John H. Bunzel of Stanford University. His main points, which apply to all discrimination may be summarized as follows:

1. Although alledgedly intended to eradicate discrimination, quotas are really a new form of discrimination.
2. The use of bad means to achieve supposedly good ends is self-defeating and destructive.
3. By leading people to believe that discrimination can be fought by relatively mechanical means, quotas will reduce the incentive for reform.
4. By destroying the principle that merit should be supreme, quotas obliterate the only possible objective legal standard on which a finding of discrimination can be based.
5. Quotas destroy the common set of rules which holds America together – solely on the basis of group identity – at the expense of innocent.
6. Quotas intensify polarization and antagonism among groups. Victims will hate the beneficiaries.
7. Quotas require heavy-handed governmental classifications of our private and personal characteristics, and, by the intrusion of the state, thrust considerations of these traits into decision-making processes where such matters as race, sex and ethnicity should be irrelevant.

J. Bunzel, "The Quota Mentality," *Freedom at Issue* (Nov.Dec.1973)

ARGUMENTS

THE CLASS TO WHICH WEBER BELONGS, WAS UNJUSTLY AND CAPRIOUSLY DENIED CLASSIFICATION AS A "PROTECTED MINORITY GROUP" BY THE EEOC AND THE U.S. DEPT. OF LABOR, THUS ESTABLISHING A FALSE BLACK-WHITE QUOTA SYSTEM.

A. The selection of particular "minority groups" by the EEOC and the Dept. of Labor was not based upon valid socio-economic or historic principles, which could be justified to the point of excluding WEBER's Class. The fact is that several "minority" groups included in the EEOC's reporting requirements have much less objective reasons for being "protected" than would Americans of Acadian descent.[9]

B. The fact that Caucasian groups, or those groups the EEOC perceives as being Caucasian are not homogenous in income, socio-economic characteristics and history leaves the lower income "Caucasian groups" at the grave disadvantage of

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[9] From a report published by the United States Commission on Civil Rights (August 1978) entitled *Social Indicators of Equality for Minorities and Women,* the astounding revelations concerning Japanese, Chinese, and Philipino Americans will certainly interest this Court. This report indicates that Japanese-American and Majority households had the following median household Per Capita Income:

	1959	1969	1975
Japanese-Americans	$1680	$3184	$6105
Majority	$1472	$2601	$4333

Although there is no published material regarding the precise Per Capita Income of Americans of Acadian descent which is Known to this Amicus Curiae, it would appear that both Francophones (French speaking people) and Americans of Acadian descent (many of whom are not presently French speaking) have a Per Capita income below that of the American "majority," as they essentially are concentrated in low-income states such as Louisiana, New Hampshire, Maine, and Rhode Island. And further because their numbers are largely absent from high income professions.

having to accept the median "Caucasian income and unemployment rates" as those which preferred "minorities" can attain by legal redress, but not themselves.[10,11]

C. If an employer employs a disproportionately small number of EEOC-defined minorities the burden of proof automatically falls upon the employer to prove that reason for such low parity was non-discriminatory, however, the reverse is not true.[12,13,14]

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[10] The report noted in Reference No. 9, further indicates that unemployment among Japanese-Americans has averaged less than half of the majorities' average during the years 1960, 1970, and 1976. The following is an extract from Table 2.4, showing the percentage of persons from 25 to 29 years of age who have completed at least 4 years of college:

	1960	1970	1976
Males			
Japanese-Americans	35%	39%	53%
Chinese-Americans	49%	58%	60%
Philipino-Americans	19%	28%	34%
Majority	20%	22%	34%
Females			
Japanese-Americans	13%	31%	35%
Chinese-Americans	26%	42%	44%
Philipino-Americans	16%	50%	51%
Majority	9%	14%	22%

[11] Representative Waxman (Dem. – Los Angeles, Ca.), states: "Though only 3% of the national population (Jews), they are grossly over represented in law, medicine, accounting and the academic professions." He further states: "Has this overrepresentation been obtained illegitimately or does it represent unique aspects of American Jewish Culture and experience?" *L.A. TIMES,* May 1, 1975. Mr. Waxman raises the question of whether a professionally over-represented ethnic group should be penalized when it appears that this group has obtained it's place in society legitimately. This Amicus raises the same question with respect to Brian Weber's Class.

[12] The EEOC advises employers that they have a duty to maintain parity in favor of EEOC defined minorities – and not to others. See *Affirmative Action and Equal Employment, A Guidebook for Employers,* Vol. 1 & 2 printed by the EEOC, Jan. 1974.

D. Persons of WEBER's Class have been historically and continuing into present times have been persecuted in the United States. The United States Dept. of Justice, the EEOC, and the Dept. of Labor choose to ignore the persecution of French-Canadian-Americans & Americans of Acadian descent. A disturbing example of the above noted persecution is/was the April 19th 1976 racial attack on two French-Canadian-Americans, in Boston, Massachusetts, by a Black mob. Richard Poleet, then 34, was dragged from his auto and beaten on the head with a brick.[15] He remained hospitalized in poor condition for almost a year before he died. His face had been crushed and more than 40% of his brain had been removed in four operations. The second victim. Linda Bourdreau, then 17, suffered a

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[13] If the French population of Canada can be compared to the Acadian population in the United States, in socio-economic characteristics, the EEOC would be hard put to defend it's exclusion of Americans of Acadian descent from the "affirmative action"program. In a recent speech Prime Minister Pierre Trudeau stated: "The population of Canada is 27 percent Francophone. Yet even by the early 1970's studies showed that the national proportion of French Canadian senior executives was less than 9 percent in the corporate sector, and less than 15 percent in the Federal public service. The population of Quebec is more than 80 percent French-speaking. Yet out of Quebec's largest 100 business firms, only four have five or more French Canadian senior executives – and 43 of these firms do not have a single French Canadian in their senior ranks." See "What Quebec Really Wants", *TORONTO STAR,* (August 1977)

[14] The fact that the EEOC perceives Americans of Acadian ancestry as "Caucasian" does not belie the fact that the early settlers of Acadia were of mixed French and Indian blood and that no person of Acadian ancestry can claim to be purely White.

[15] For an account of this gory episode regarding persecution of Americans of Acadian descent, see "Ex-Wife's Plea for Victim of Boston Racial Beating," *S.F. Chronicle,* May 13, 1976. For an interesting analysis of how the American press unfairly reports the above racial beatings of Acadian Americans see the *Oakland Tribune's* front page April 6, 1976 article concerning a Black in Boston who was beaten and received a broken nose (12 column inches and three photographs) as compared to the one inch, page 2 article in the *Tribune,* of April 24, 1976, concerning Poleet.

fractured skull when she was attacked by another Black mob, while she was in her car in a Boston Housing Project. Many of these murderers continue to walk the streets.

The statistics which indicate that Americans of Acadian descent are in similar need of protection as that of the EEOC selected minority groups have been ignored by the EEOC. A report submitted to the EEOC in 1973 by the New Hampshire Commission on Human Rights, which strongly indicated that Americans of French-Canadian descent were underutilized in the professional categories of employment, has not prompted the EEOC into classifying Americans of Acadian descent as a protected group similar to Spanish-Surnamed-Americans.[16]

Further, the lack of mandatory reporting requirements for the various groups of persons of Acadian descent in the United States, has handicapped any effort to prove the disparities which this Amicus believes exist.

What few indices of comparison that are available reflect a lower than average mean income for Americans of Acadian descent, a lower percentage of government employment and a lower educational attainment level.[17]

[16] The October 15, 1973 New Hampshire Commission on Human Rights Report concerning French and non French-workers in the State of New Hampshire; shows a grave statistical disparity existed in 1972-73 which reflected the grossly inferior employment classifications of the French. In New Hampshire, which is approximately one-third French-Canadian-American and 15.2% Francophone, the above report indicated that 36.24% of the New Hampshire workforce was French-Canadian-American. Although having 36.24% of the workforce, they had less than 3% of the office managers, less than 18% of the professionals, less than 8% of the technicians. Conversly non-French White males having 38.94% of the work force had 97.45% of the office manager positions, 82.23% of the professional positions, and 93.45% of the technical positions. This report is obtainable from the New Hampshire Commission of Human Rights, 66 South Street, Concord, New Hampshire.

[17] Only 4.1% of the Francophone population of Main, aged 25 years or older, had in 1970, a college education of four or more years. This compares to 9.4% for the same group in the English speaking community. In addition, the figures for Francophone persons aged 25 years or older, in 1970, having an elementary school education or less was 42.9% of this group, while the figure for the English speaking population was 17.6% for the same age group in 1970. See page 7 of *Social & Economic Profile of French and English Mother Tongue Persons – Maine* 1970 by Madeleine Giguère, University of Maine at Portland.

Madeleine Giguère further indicates that far few Francophones were employed as government workers in the Federal, State and Local governments in Maine in 1970, than their English speaking counterparts. The following is an extract from page 9, Supra:

Class of Worker for
MOTHER TONGUE GROUPINGS: Maine, 1970
(percent)

	English	French
Total Employed	100.0	100.0
Government Worker	16.6	10.2
Federal	5.1	3.8
State	4.1	2.5
Local	6.9	3.9

In addition, Madeleine Giguère indicates at page 12, Supra, that the mean personal income for Francophones in Maine in 1970, was much lower than for English speaking persons. For instance, she indicates that the average mean income of a Francophone male college graduate was $6,560 in 1970, as compared to $8,266 for the average mean for the English speaking male college graduate.

E. Title VII has been administratively interpreted in favor of EEOC selected minorities – without any basis except EEOC promulgations. If the EEOC's own employment practices can be taken as an example of how it wants employers to obey Title VII, then this nation will have an interesting future.[18] The use of the EEOC-definition of "minority" and the Title VII requirement compelling those who wish legal redress to file

[18] The EEOC itself employs mostly EEOC defined minorities. Of the 2,359 EEOC employees reported to the U.S. Civil Service Commission in Nov. 1976, only 17.3% were Caucasian males, and only .6% were Native Americans. See *Minority Group Employment in the Federal Government.* Nov. 1976, published by the United States Civil Service Commission.

complaints through the EEOC, have a chilling discriminatory effect on Americans of Acadian ancestry. In order for Brian Weber to receive a fair re-trial at the District Court level or the appellate level, his class would also have to be defined as "minority" and the investigative and legal functions of the EEOC, as set forth in Title VII, would have to be free of racially partisan prejudice.[19]

SUMMATION OF ARGUMENTS

Presently Title VII does not in fact protect Americans of Acadian descent, because the agency charged with administering Title VII, the EEOC, has not taken the administrative steps necessary to effect such protection. The unfair and arbitrary exclusion of Americans of Acadian descent and many other groups was not based upon valid socio-economic and historic principles which could withstand the scrutiny of legal examination. The fact that many excluded minority groups, including the class to which Weber belongs, have been seriously damaged in morale and in their rightful place in society, cannot be seriously challenged. The previous quotation from Representative Waxman regarding the overrepresentation of Jews in American professional life, should not be an indictment of Jews for the hard work and native intelligence of the individual Jews involved. The fact remains that not only Jews, but also Congregationalists, Episcopalians, Unitarians and others have as groups been disproportionately successful in American life. To average essentially lower income ethnic groups such as Americans of Acadian descent and Portugese Americans with essentially wealthy groups is unjust in the extreme, when the

[19] See "Black Muslims Keep Jobs, Money in Black Community" for an interesting article on how Black businesses can "keep both jobs and money flowing in the Black community." May, 1 1975, *Christian Science Monitor*, Western Edition.

purpose of such averaging is to determine the legal redress rights of specially protected ethnic groups. Some of these specially protected groups are low income, but three of the groups show marked signs of not needing any extra help. Japanese-Americans in particular, are recipients of "affirmative action" largess, when it appears that Americans of Acadian ancestry, or for that matter, most American groups, have a better statistical argument for "protection."[20] From a historical point of view the Japanese-Americans may have a point, but then again, so do Americans of Acadian descent. The three differences between what happened to the Japanese-Americans in World War II, and what the Anglo-Americans did to the Acadians are:

1. What happened to the Japanese occurred during wartime as opposed to the Acadian deportation.
2. The Japanese were given a measure of compensation, the Acadians were not.
3. The Japanese were for the most part allowed to return to their homes, the Acadians were not.

The American Legacy of Discrimination and persecution of Weber's Class prejudices the case of the petitioners. As both the Union and Kaiser voluntarily cooperated with the "affirmative action" program promulgated by the EEOC and as this program has from it's inception excluded Americans of Acadian descent; these petitioners are not now in a position to disclaim responsibility for the alleged misdeeds which are the root arguments for all the petitioner's self-flagellation. These misdeeds if in fact they exist, should not be borne by Weber, as his class has historically been subject to at least as much deprivation as several of the groups which petitioner's recognize as being rightfully entitled to special protection of the law.

[20] An avowed opponent of the "Affirmative Action" program, Senator Hayakawa says that Japanese-Americans have achieved what they wanted most – "Equality of opportunity." *San Jose Mercury*, Feb. 25, 1979, page 1. Also see references 10 & 11 supra.

CONCLUSION

This Court should order the petitioners to obey the directives of the original order of the District Court.

Respectfully,

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